

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CRAIG CROSBY and CHRISTOPHER
JOHNSON, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. C21-1083-JCC

ORDER

This matter comes before the Court on Plaintiffs’ motion to compel and for sanctions (Dkt. No. 96) along with the parties’ motions to seal (Dkt. Nos. 99, 109). Having duly considered the record and the briefing, the Court GRANTS in part and DENIES in part each motion for the reasons described below.

A. Motion to Compel

The Court has issued four discovery orders preceding the instant motion. (*See* Dkt. Nos. 49, 58, 74, 90.) Pursuant to those orders, Defendant must produce discovery responsive to Plaintiffs’ jurisdictional requests, at least as they relate to Amazon Warehouse Deals’ (“AWD”) products containing 18650 rechargeable batteries, regardless of whether the battery type is stated within AWD’s advertising (*i.e.*, “title 18650 batteries” and “non-title 18650 batteries”), so long as the advertising includes potentially dubious assertions regarding the batteries’ energy

1 capacity. (*See id.*) In again moving to compel, Plaintiffs repeat their assertion that Defendant's
2 search for sales of such products during the relevant time period¹ was deficient. (*See* Dkt. No. 96
3 at 10.) Specifically, Plaintiffs' take issue with two aspects of Defendant's search of its product
4 catalogue (as described below), and additionally complain that Defendant's 30(b)(6) deponent
5 was not prepared to respond to questions during his deposition. (Dkt. No. 96 at 12–14.).

6 As to the search, Defendant limited it to those products referencing "18650"
7 [REDACTED]
8 [REDACTED]"). (Dkt. No. 115 at 9.) Nor did Defendant search its accompanying image catalogue for
9 dubious energy claims, (*see* Dkt. No. 96 at 8), despite prior direction to do so. (*See* Dkt. No. 90
10 at 3.) At least with respect to the catalogue data search, Defendant asserts the method it
11 employed, *i.e.*, first limiting its search to products with an "18650" reference, was the most
12 logical way. (Dkt. No. 115 at 9.) This is because [REDACTED]
13 [REDACTED]
14 [REDACTED] (*Id.*)

15 1. 18650 Battery Search

16 Again, the Court ordered Defendant to provide Plaintiffs with jurisdictional discovery
17 relevant to AWD's sales of both title and non-title 18650 rechargeable batteries. (Dkt. No. 90 at
18 3.) The Court did not limit this order to sales of products with an "18650" stored as a value
19 somewhere in AWD's catalogue. While Defendant's strategy correctly identifies those products,
20 it does not do enough to capture the sales of all non-title 18650 batteries. Specifically, to the
21 extent that there is [REDACTED]
22 [REDACTED] (Dkt. No. 115 at 9), the Court
23 does not view this as an excuse to avoid providing Plaintiffs with the discovery needed to
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26 ¹ This is presently limited to those products sold from May 4 through the complaint date of
August 13, 2021.

1 establish this Court's jurisdiction over their claims.

2 As a result, Defendant must comply with its discovery obligation through one of two
 3 means: First, Defendant may provide Plaintiffs with a detailed description of any [REDACTED]
 4 attribute that could hold information which indicates a product contains non-title 18650
 5 batteries.² Plaintiffs, once equipped with a description of these attributes, would then need to
 6 provide search terms to Defendant, and Defendant's custodians must then perform a search using
 7 those terms.³ Second, if this is overly burdensome, Defendant shall provide Plaintiffs with raw
 8 catalogue data of all AWD sales during the relevant time period. *See Fed. R. Civ. P.*
 9 34(b)(2)(E)(i). It would then be Plaintiffs' obligation to concoct a methodology to search for
 10 potentially responsive products within this data, in its effort to support the jurisdictional
 11 requirement(s) in this case.

12 2. Energy Capacity Image Searching

13 As the Court has previously ordered, Defendant must search for advertised energy
 14 capacity in any of the text fields *or accompanying photos* of products sold by AWD during the
 15 relevant period, if they contain title and/or non-title 18650 batteries. (*See Dkt. No 58 at 3.*) Yet,
 16 Defendant has not done so. (*See Dkt. No. 101-1 at 94.*) Again, Defendant has two options. First,
 17 after properly using Plaintiffs' search terms as directed above, Defendant must review all images
 18 for those products and, to the extent they contain a claimed energy capacity, provide that image
 19 to Plaintiffs. Second, if this is overly burdensome, Defendant shall provide Plaintiffs with all
 20 images of products sold by AWD during the relevant time period. *See Fed. R. Civ. P.*

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 22 ² This directive should be read broadly, but reasonably. For example, Defendant should be
 23 expected to provide information for an attribute relating to the manufacturer (*e.g.*, where the
 24 value "Dyson" might be stored for a Dyson vacuum). However, Defendant is not expected to
 provide information relating to a product's color, for example. At a minimum this must include
 all [REDACTED] attributes noted by Plaintiffs. (*See Dkt. No. 100 at 11.*)

25 ³ Similarly, this should also be reasonable as to not burden the Defendant. Plaintiffs must explain
 26 to Defendant why they think this search term may reasonably result in a successful search for
 products containing non-title 18650 batteries.

1 34(b)(2)(E)(i). It would then be Plaintiffs' obligation to concoct a methodology to search for
 2 potentially responsive products within these images.

3 3. 30(b)(6) Representative

4 Plaintiffs argue Defendant's corporate representative was unprepared for a deposition
 5 relating to two topics in Plaintiffs' jurisdictional discovery request. (*See* Dkt. No. 96 at 12.)
 6 However, in the Court's view, the issue is relevance—not preparedness. Plaintiffs, in moving to
 7 compel, clearly believe that a Rule 30(b)(6) deponent is required to answer questions regarding
 8 Amazon's corporate structure and the operations of its branches other than AWD. (*Id.* at 13.)
 9 And they take issue with the fact that the designated representative, Ashkay Atwe, was unable to
 10 do so. (*Id.*)⁴ But the Court fails to see how Amazon's overall organizational structure and/or the
 11 operations of non-AWD branches is relevant to determining how much revenue AWD generates
 12 from the sale of 18650 batteries with dubious energy claims.

13 4. Sanctions

14 As a sanction for Defendant's alleged failure to comply with this Court's prior orders,
 15 Plaintiffs ask the Court to extend the relevant time period subject to jurisdictional discovery.
 16 (Dkt. No. 96 at 14.) Indeed, sanctions are appropriate when a party fails to obey a discovery
 17 order. *See* Fed. R. Civ. P. 37(b)(2). But the situation here is more nuanced. Defendant did not
 18 *refuse* to search for non-title 18650 products; rather, it would seem its data systems do not
 19 [REDACTED]. (*See* Dkt. No. 111 at 7–9.) And while Defendant failed to work
 20 collaboratively with Plaintiffs to fashion a work-around, this, alone, is not sufficient to warrant
 21 sanctions. Moreover, the Court notes that its jurisdiction depends on the state of things at the
 22 time of the action. *Mollan v. Torrance*, 22 U.S 537, 539 (1824). As such, there is no bases to
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24 ⁴ The Court does not agree that Mr. Atwe “was unable to provide relevant information as to even
 25 the most basic matters concerning Amazon Warehouse Deals.” (Dkt. No. 121 at 8.) All instances
 26 of Mr. Atwe's inadequacies as a 30(b)(6) deponent appear related to matters not directly related
 to AWD.

1 extend the subject time period, absent an amended complaint. *See Grupo Dataflux v. Atlas Glob.*
 2 *Grp. L.P.*, 541 U.S. 567, 570–71 (2004) (discussing the ‘time-of-filing’ rule).

3 **B. Motions to Seal**

4 While the public has a common law right to inspect and copy public records, including
 5 those from judicial proceedings, these rights are not absolute. *Foltz v. State Farm Mut. Auto. Ins.*
 6 *Co.* 331 F.3d 1122, 1135 (9th Cir. 2003). So long as the Court finds there is “good cause” to
 7 preserve the secrecy of a discovery document attached to a non-dispositive motion, the common
 8 law right falls away. *Id.* Here, the parties stipulated to a protective order regarding the production
 9 of confidential material, which the Court endorsed. (*See* Dkt. No. 31.)⁵ And portions of
 10 Plaintiffs’ motion to compel, along with the related briefing and supporting declarations, contain
 11 the type of proprietary confidential information subject to the aforementioned protective order.
 12 For this reason, sealing those portions is warranted. However, Plaintiff filed under seal large
 13 portions of deposition transcripts for two of Defendant’s Rule 30(b)(6) representatives, (Dkt.
 14 Nos. 101-1, 101-2). To the extent they discuss Defendant’s proprietary financial information
 15 and/or sales data, along with how Defendant structures and must therefore construct searches of
 16 its data catalogue, they should remain sealed. But the remainder should not.

17 **C. Remedial Actions**

18 Accordingly, the Court GRANTS in part and DENIES in part Plaintiffs’ motion to
 19 compel (Dkt. No. 96) and the parties’ motions to seal (Dkt. Nos. 99, 109) and ORDERS as
 20 follows:

- 21 • 18650 Battery Search – Defendant shall do one of the following within 15 days of
 22 this Order:

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 25 ⁵ “When a court grants a protective order for information produced during discovery, it
 26 already has determined that ‘good cause’ exists to protect this information from being disclosed
 to the public by balancing the needs for discovery against the need for confidentiality.” *Phillips*
ex rel. Estates of Byrd v. General Motors Corp., 307 F.3d 1206, 1213 (9th Cir. 2002).

- Provide Plaintiffs with the names of all [REDACTED] it searched through to create the initial set of products. Once these names are received, Plaintiffs may seek descriptions from Defendant of any attribute it deems relevant to finding products that either are or contain 18650 rechargeable batteries. These descriptions, which shall be provided within 15 days of any request from Plaintiffs, must include the type of field (*e.g.*, freeform) in addition to an explanation of what data is stored in the field. Once Plaintiffs have had an opportunity to review these descriptions, they will then provide values for Defendant to search for in any of these attributes to create a subset of products that either are or contain 18650 rechargeable batteries. The resulting search must be completed, and the results remitted to Plaintiffs within 15 days of receiving the terms from Plaintiffs.
- Provide Plaintiffs with *all* raw data related to every product sold during the relevant jurisdictional discovery period, so Plaintiffs may conduct their own search for potentially responsive products. This disclosure should include every product sold during the relevant time period, with every value in all [REDACTED].
- Energy Capacity Image Search – Defendant shall do one of the following:
 - After conducting the search for 18650 batteries as directed above, within 15 days, it shall review accompanying photographs for indications such products make any energy capacity related claims and provide those images to Plaintiffs.
 - Provide Plaintiffs with all such raw images within 15 days of this Order so Plaintiffs can conduct their own search for responsive products.
- Sealed filings (Dkt. Nos. 101-1, 101-2) – Defendant shall do the following within

1 15 days:

- 2 ○ Review Mr. Atwe's and Mr. Spiezel's depositions and file redacted
3 versions with the Court, based on the guidance above.⁶

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5 DATED this 7th day of December 2023.

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9 John C. Coughenour
10 UNITED STATES DISTRICT JUDGE

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26 ⁶ The Court anticipates Mr. Spiezel's deposition will be heavily redacted while Mr. Atwe's
deposition will contain far fewer redactions.